

The legal protection of clients of financial institutions

Abstract

The first chapter focuses on the definition of basic concepts essential to the subject of this work. Emphasis was placed on defining the term of client in relation to the notion of a customer who is often used in positive law at both European and national level. Furthermore, the concept of consumer is defined, which is a generally used category of customers and is offered the highest legal protection. The notion of financial institution and the concept of legal protection are also important in defining the scope of this work. Given the diversity of the current financial services market, in the rest of my thesis I have focused only on the most important providers of financial services and the legislation governing their activities. The concept of legal protection is defined in the sense of division into institutional and normative legal protection, with the focus being on normative protection.

The aim of the second chapter was to describe the basic aspects of two complementary principles of law as the theoretical basis of legal protection of clients, which are the concept of autonomy of will and the protection of the weaker party. The principle of protection of the weaker party and its modality of consumer protection has been introduced from the point of view of current developments in this area, and I have also focused on the extent to which this principle should be introduced in order not to limit the freedom of contract inappropriately. At the end of this chapter, I introduced the current trend of private law being publicized.

In the third and most extensive chapter of this work, I analyze the most important legislation and its possible European basis, which contain legal norms aimed at protecting clients of financial institutions. The chapter is divided into general legislation, which has broader focus than just the activities of financial institutions, and specific sectoral acts whose scope is limited to the provision of financial services and specific institutions and the legal protection of their clients.

The most detailed analysis is subject to individual sectoral acts. The significance of this analysis is mainly due to the major changes that these have recently gone through and will continue to go through in the coming months. Firstly, I am introducing a new Payment System Act which came into effect on 13 January 2018 and transposed in particular the PSD 2 directive. I am focusing on the approach of this legislation to the protection of individual groups of

payment service users where there has been a departure from the original legislation in relation to small businesses. The Capital Market Undertakings Act, which contains the most detailed and most elaborate way of categorizing clients is subject to a detailed review. The analysis also focuses on a draft of the Distribution of Insurance Act, which transposes the IDD directive and is currently in an advanced stage of the legislative process.

The final chapter presents possible alternatives for addressing deficiencies and gaps identified in the previous analysis of individual legal regulations. Alternative approaches are presented with their positives and negatives.

Key words: [client, the protection of weaker party, financial institution]